S.276. An Act Relating to Rural Economic Development

House Agriculture and Forestry Section by Section Summary

Sec. 1. 10 V.S.A. § 325m. Rural Economic Development Initiative (REDI)

- Sec. 1 amends the REDI Program adopted last year to address the scope of the program.
- These changes focus the REDI program on offering grant assistance to small towns and rural areas.
- REDI would no longer conduct business development as other State agencies conduct these activities.

Sec. 2. Outdoor Recreation Friendly Community Program

- Sec. 2 establishes an Outdoor Recreation Friendly Community Program administered by the Department of Forests, Parks and Recreation and the Agency of Commerce (ACCD) to provide incentives for communities to leverage outdoor recreation assets to foster economic growth.
- The Commissioner of Forests, Parks and Recreation, ACCD, and the Vermont Outdoor Recreation Economic Collaborative shall select communities for the Program using specified factors, including
  - community economic need;
  - outdoor recreation as a priority in a town plan or other pertinent planning document; and
  - whether a foundation of outdoor recreation assets is already in place with potential for growth;
- Communities accepted into the Program shall be offered incentives, including.
  - preferential consideration to become part of the Vermont Trail System;
  - preferential consideration when applying for grant assistance through the Recreational Trails Program and the Land and Water Conservation Fund Program; and
  - recognition as part of a network of Outdoor Recreation Friendly Communities.
- Upon receipt of funding, the section also requires ACCD to approve pilot communities to participate in the Program. If funding is made available, it may be used for specific purposes, including.
  - communitywide outdoor recreation planning;
  - services of consultants and other technical assistance providers; and
  - public facing mapping and other informational materials.
- The Commissioner of Forests and Parks shall report over the next 2 years on progress of the pilot.

Sec. 3. Act 250 Trails; Purpose

- Session law section stating that the purpose of Sec. 4 of the act is to provide consistency in Act 250 review of the construction and improvement of trails that are part of the Vermont Trails System.

Sec. 4. 10 V.S.A. § 6001(3). Act 250 Review of Vermont Trails System

- § 6001(3)(A)(v) provides that trails that are part of the Vermont Trails Systems are for a State purpose.
- § 6001(3)(C) provides that for construction on a trail recognized as part of the Vermont Trail System, the computation of land involved shall not include any portion of the trail of the of the System in existence as of July 1, 2018, unless the portion will be physically altered on the same tract of land.
- § 6001(3)(F) provides that when there is Act 250 jurisdiction over a trail, jurisdiction extends only to the trail corridor and any area directly or indirectly affected by the construction.
  - The width of the corridor shall be 10 feet unless the District Commission determines circumstances warrant a wider or narrower width.

Sec. 4a. Repeal of Act 250 Trail Language

- The amendment in Sec. 4 to 10 V.S.A. § 6001(3)(C) would be repealed July 1, 2019.

Sec. 4b. Commission on Act 250 Review of Trails Regulation

- Requires the ongoing legislative Commission on Act 250: the Next Years to evaluate the strengths and challenges associated with Act 250 regulation of trails and alternative structures for planning, review, and construction.
- The Commission is to submit its recommendation as part of its report due on December 15, 2018.
- To provide information to the Commission, the Commissioner of Forests, Parks and Recreation and the Chair of the Natural Resources Board shall form a recreational trails working group of interested persons that is to submit recommendations to the Commission by October 1, 2018..

Sec. 5. 6 V.S.A. § 4710. Farm and Forest Viability Program

- Sec. 5 amends the current Farm Viability Program so that it is the Farm and Forest Viability Program.
- Conforming changes are made to indicate the program will serve the agricultural and forest sectors.
- The Commissioner of Forests, Parks and Recreation is added to the advisory board, as well as a person with expertise in the forestry business.
- The Farm Viability special fund and a special account are repealed because they are not used.

Sec. 5a. 6 V.S.A. § 4989. Nutrient Management Plan Technical Service Providers

- Sec. 5a requires the Agency of Agriculture to adopt by rules a process by which nutrient management technical service providers shall be certified in the State.
- The service providers would need to complete 8 hours of training over each 5-year period regarding subjects such as taking soil samples, use of erosion tools, and use of nutrient index tools.
- Beginning July 1, 2019, a nutrient management technical service provider shall not create a nutrient management plan for a farm unless certified by the Secretary of Agriculture.

Sec. 6. 10 V.S.A. § 6084. Act 250 and Sawmills

- Sec. 6 provides that a forest processing operation that requires an Act 250 permit will be reviewed as a minor application if it is:
  - A sawmill that produces 3.5 million board feet or less annually; or
  - An operation that produces 3,500 cords or less of firewood or cordwood; or
  - An operation producing 10,000 tons or less of bole wood, whole tree chips, or wood pellets.
- This is not an Act 250 exemption. A permit is still required. An interested person can request a hearing for full application review.

Sec. 7. Commission on Act 250; Review of Forest Products Processing

- Requires the Commission on Act 250 to review whether Act 250 permit conditions for forest processing operations negatively impact an operation ability to operate in an economically sustainable manner.
- If the Commission determines Act 250 permit conditions do have a significant negative economic impact on forestry processing operations, the Commission shall recommend ways to mitigate the impacts.

Sec. 8. 3 V.S.A. § 2822(j). Wetlands Permit Fees

- Under Sec. 8, a farmer installing a pipeline in a wetland for transport of manure for farming will pay a $200 permit fee instead of $0.75 per foot, when the pipeline serves a water quality or conservation practice
- The farmer would still need to get a permit. ANR has approved this change.

Sec. 9. Department of Public Service; Demand Charge Report

- Sec. 9 requires the Department of Public Service to report to the Legislature on electric utility demand charges and their effect on the ability of industrial enterprises to locate in rural towns of the State.

Sec. 10. 32 V.S.A. § 8911. Purchase and Use Tax; Forestry Equipment

- Sec. 10 provides that motor vehicles used for forestry or harvesting shall not be subject to the purchase and use tax for motor vehicles.
- Last year, the General Assembly exempted this equipment from the sales tax. This change is to ensure consistency of exemption.

Sec. 11. BGS Public Buildings; Wood Energy; Vermont Suppliers; Report

- Sec. 11 requires BGS to report to the General Assembly on or before December 15, 2018, regarding the feasibility of requiring State or municipally-owned public buildings that use wood to produce heat or electricity, or both, to give preference to Vermont suppliers when making fuel supply purchases.

Secs. 12-14. 6 V.S.A. chapter 34. Industrial Hemp Program Compliance with Federal Law

- In 2014, the federal Farm Bill authorized States to conduct industrial hemp cultivation programs.
- Hemp cultivated under the federal program is not considered a controlled substance under federal drug laws.
- Vermont has a hemp program, but it requires some minor amendments to conform with the federal farm bill.
- Secs. 12 to 14 make these minor amendments by clarifying the program is for research purposes and by providing the Agency must register hemp growers and certify the land where hemp is grown.
- The Attorney General's Office reviewed the language and the AG thinks it is consistent with the federal Farm Bill authority from 2014.

Sec. 15. 6 V.S.A. § 567-568. Hemp Testing

- Sec. 15 adds 6 V.S.A. § 567 requiring the Agency of Agriculture to establish a cannabis quality control program to test and verify hemp and hemp-infused products.
- Sec. 15 also adds 6 V.S.A. § 568 to address when the Agency of Agriculture or a medical marijuana dispensary tests a hemp crop and the hemp has a THC content of more than 0.3 percent. Under § 568 the hemp grower can:
  - enter an agreement with a dispensary for the separation of THC from the hemp crop, return the hemp crop to the grower, and retention of the THC by the dispensary; or
  - sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or
  - arrange for the Secretary to destroy or order the destruction of the hemp crop.
- Sec. 15 also provides that a person registered with the Secretary as growing the hemp crop shall not be subject to civil, criminal, or administrative liability if the tested hemp has a THC concentration of one percent or less.

Sec. 16. 18 V.S.A. § 4474e. Medical Marijuana Dispensaries

- Sec. 16 authorizes medical marijuana dispensaries to acquire possess, process, manufacture, transfer, transport and test industrial hemp.

Sections 17-20. Produce Inspection

- The U.S. Food and Drug Administration (FDA) has adopted rules under the Food, Safety Modernization Act (FSMA) for the growing, harvesting, packing, and holding of produce for human consumption.
- FDA allows states to implement and enforce the FSMA rules if the state has sufficient authority.
- When the FSMA rules were proposed, the Legislature granted the Agency of Agriculture authority to implement the FSMA rules in Vermont. But, at that time the FSMA rules were not finalized, and it was not clear what authority a state would need to be approved by FDA to administer the FSMA rules.
- FSMA rules have been finalized and H.904 makes technical amendments to FSMA citations in statute and gives the Agency of Agriculture the authority FDA requires for enforcement of FSMA rules.

Sec. 17. 6 V.S.A. § 21(b). Agency of Agriculture General Authority

- Sec. 17 updates the citation to the Food Safety Modernization Act.

Sec. 18. 6 V.S.A. § 852. Agency of Agriculture Authority to Enforce FSMA Rules

- Sec. 18 amends the Agency's authority to enforce the FSMA rules to correct the cited title of FSMA rules. The FSMA rule title was not finalized in 2015 when this section was first enacted.

Sec. 19. 6 V.S.A. § 853. Farm Inspections

- Sec. 19 deletes a requirement that the Secretary may issue a certification of inspection to a produce farm after inspection of the farm for compliance with the FSMA rules.
- The certification is currently voluntary, is not required by the FDA, and no growers requested it.

Sec. 20. 6 V.S.A. §§ 856 and § 857. Enforcement; Corrective Actions; Administrative Orders

- Sec. 20 adds 2 new statutory sections to provide the Agency with authority to enforce the FSMA rules.
- The first section is 6 V.S.A. § 856. It is not required by FDA. Sec.20 follows the Agency model of enforcement by directing the Agency to work with farmers to implement voluntary corrective actions.
- If the Agency pursues a voluntary corrective action, a written warning will be issued that includes:
    - a description of the alleged violation; identification of this section; identification of the applicable rule violated; and the required corrective action that the person shall take to correct the violation.
- Sec. 20 adds 6 V.S.A. § 857, which provides the Agency with the authority to enforce the FSMA rules.
    - The Agency of Agriculture has general enforcement authority for its programs, but that authority does not include the specific authority required by FDA, including administrative order authority.
- § 857 authorizes the Agency to issue cease and desist orders, administrative orders, and verbal orders to protect public health. It also authorizes the Agency to require mandatory corrective actions.
- The section also gives the Agency authority to seek civil penalties under its general penalty authority.
    - The maximum penalty is $1,000 for individual offenses and $25,000 for continuing offenses.
- When an order or corrective action is issued, the Agency shall provide a person with a statement that the order is effective on receipt and that a person has a right to request a hearing within 15 days.
    - If a hearing is not requested in 15 days, the right to a hearing is waived.
- A hearing request does not stay an order. An order is in effect until a court lifts it or it's complied with.
- A person aggrieved by an enforcement action may appeal to the Civil Division of the Superior Court.

Sec. 21. 6 V.S.A. § 1461a(c). Livestock and Poultry Transported for Slaughter

- Last year, the animal health bill provided that a person cannot remove animals transported to a slaughter facility without the approval of the State veterinarian.
    - The Agency does not want animals removed from a facility without agency approval if the slaughter facility won't slaughter the animals due to disease or some other issue with the animal.
- Transport was defined as transport to a facility regardless of whether the animals have been offloaded.
- A transporter of animals may have several animals on a truck that are destined for different locations.
- Sec. 21 amends the requirement to provide that animals are not transported to a slaughter facility until they are offloaded from the conveyance.

Sec. 22. ACCD; Industrial Park Designation

- Sec. 22 requires the Agency of Commerce and Community Development to report to the General Assembly with recommendations for establishing an economic development program under which defined parcels in rural areas of the State are designated as industrial parks for the purposes of providing regulatory and permitting incentives to businesses sited within the industrial park.

Sec. 23. 20 V.S.A. § 2731(c). Fire Safety Fees

- Sec. 23 lowers the maximum fee that the Division of Fire Safety may assess for review of fire safety or building code applications. The current maximum fee is $185,000.
    - Sec. 23 would lower it to $130,000.

Sec. 24. 32 V.S.A. § 3755. Use Value Appraisal.

- Sec. 24 makes several technical or corrective amendments to the process for participation of managed forestland in the use value appraisal program.
- § 3755(b)(1), clarifies that a forest management plan must be filed in the manner and form required by the Department of Forests and Parks.
- § 3755(b)(1)(E) and (F), reenacts language that was inadvertently deleted in previous years. This language authorizes wildlife habitat and ecologically significant areas to be enrolled in use value as part of a forest management or conservation plan.
- § 3755(b)(3) clarifies that information in a management activity report, except for tax identification numbers, shall be forwarded from PVR to the Department of Forests and Parks.
- § 3755(c)(2) clarifies the Department of Forests and Parks' authority to enter forestland enrolled in use value appraisal in order to conduct inspections. The Department may bring other ANR staff necessary for the inspection or to provide for safety of Department staff.

Secs. 25. 32 V.S.A. § 9701; Advanced Wood Boilers; Sales Tax

- Sec. 25 defines advanced wood boilers for purposes of the sales and use tax.
- "Advanced wood boilers" are a boilers or furnaces:
    - rated as high-efficiency, meaning a higher heating value or gross calorific value of 80% or more;
    - containing at least one week fuel-storage, automated startup and shutdown, and fuel feed; and
    - meeting other efficiency and total particulate matter standards.

Secs. 26. 32 V.S.A. § 9741. Sales Tax Exemption. Advanced Wood Boilers

- Sec. 26 exempts advanced wood boilers from the sakes and use tax

Sec. 27. 32 V.S.A. § 9706(ll). Statutory Purposes of Sales Tax Exemption and Tax Credit for Advanced Wood Boilers

- Sec. 27 provides the statutory purposes for the sales tax exemption for advanced wood boilers.
- The purposes for the exemption is to promote the forest products industry in Vermont by encouraging the purchase of modern wood heating systems.

Sec. 28. 30 V.S.A. § 209(j), Self-Managed Energy Efficiency Program (SMEEP)

- Currently under SMEEP, eligible program participants include customers within the transmission and industrial rate class whose energy efficiency charge (EEC) totaled $1.5 million or more in 2008. In addition, these customers must have a comprehensive energy management program (ISO-14001 certification). Finally, they must commit at least $1 million/year (on average) to each three-year period in which they participate in SMEEP.
- The underlying bill contains two changes to SMEEP. First, it expands the eligible projects under to the program to include productivity programs and measures. "Productivity programs and measures" means investments that reduce the amount of energy required to produce a unit of product. The current program only allows for investments in energy efficiency. Second, it allows participants in SMEEP to count funds received from the government or other entities towards the required annual investment in efficiency.
- The Committee's amendment to the bill adds a change to the qualifications for participating in SMEEP. Currently, the only customer that qualifies for participation in SMEEP is Global Foundries. This amendment sets a new threshold, allowing customers that paid at least $1.5 million in EEC during 2017 to participate. This would potentially allow the company OMYA to participate in SMEEP. It amends the statute so that participants who paid $1.5 million in EEC in 2017 must spend on average $500,000 per year on efficiency programs.
- This provision is the same as Sec. 1 of H.739 that already passed the House.

Sec. 29. Creates the Energy Savings Account Partnership Pilot

- The Committee's amendment adds Sec. 29, which directs the Public Utility Commission to create, by July 1, 2019, a three-year Energy Savings Account Partnership Pilot Program.
- Energy savings accounts (ESA) exist under current law. The existing program allows eligible commercial and industrial customers the option to self-administer energy efficiency efforts instead of participating in the statewide services provided by the energy efficiency utility (EEU). Under the current ESA program, the customer pays the EEC and 70% of that amount then flows back to the customer to pay for its own completed efficiency projects. The remainder is used by the EEU for system wide benefits. To be eligible, a customer's annual EEC must total at least $5,000 per year.
- This pilot program would expand the ESA program with respect to commercial and industrial customers in areas served by Efficiency Vermont (EVT). The participants will pay their EEC and be able to use 100% of the amount paid for its own efficiency projects. Participants also would be able to access these funds before project completion.
- Funds may be used for one or more of the following: electric energy efficiency, thermal energy and process-fuel efficiency for unregulated fuels, productivity measures, demand management, and energy storage that provides benefits to the customer and its interconnecting utility. This change of policy allows a much broader range of projects than are eligible under the existing ESA, which is limited to electric energy efficiency.

- EVT and the Department of Public Service (DPS) are required to evaluate and verify the savings of each project funded under the pilot program.

- There shall be a competitive solicitation process conducted jointly by EVT, the DPS, and the Agency of Commerce and Community Development. They are required to issue an RFP (request for proposals) for participants and customer selection is to be completed before July 1, 2019.

- There is no limit on the number of participants that may be selected but, the total amount of EEC funds involved shall not exceed $2 million.

- Upon completion of the pilot program, the PUC or a third party hired by the PUC will conduct an independent evaluation. The PUC will then report to the General Assembly by January 1. 2023 on whether to continue the program and if so under what conditions or revisions, if any.

- The Committee's amendment is the same as Sec. 2 of H.739, which already passed the House, except that in addition to eligibility for customers in the commercial and industrial rate classes, it requires that at least one customer whose operation is primarily devoted to farming, regardless of rate class.

Sec. 30. Effective Dates

- Secs. 3-4b (Act 250 trails), 5a (nutrient management service providers), 6-7 (Act 250 forest processing), 8 (wetland permit fees), 17-20 (produce inspection), and 21 (livestock transport) shall take effect on passage.
- All other sections take effect on July 1, 2018.